



VINCENT C. GRAY
MAYOR

April 11, 2014

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building, Suite 504
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: Enactment of the Fiscal Year 2015 District Budget

Dear Chairman Mendelson:

I write to urge the Council to act on the FY 2015 budget submitted on April 3, 2014 within the 56 days set forth in the original Home Rule Charter, to return the budget within that time, and not to base its actions or rely in any way in considering this budget on the Local Budget Autonomy Act of 2012 (the Act), which purported to amend the Charter. Failure to do so could have serious and destabilizing consequences for the District of Columbia government.

As you know, I believe deeply that Congress should grant the District budget autonomy and should do so as soon as possible. Indeed, this Administration worked successfully to convince President Obama to include such a proposal in his pending budget legislation, and we are doing all we can to convince Congress of the wisdom and fairness of this proposal.

At the same time, I must take seriously my responsibility as Mayor of this great city to ensure that the District government complies in all respects with the governing federal law, including in connection with its budget and finances. At my request, our D.C. Attorney General Irvin Nathan has issued the enclosed formal opinion concluding that the Act is null and void as it patently contravenes the Home Rule Act and provisions of Title 31 of the U.S. Code. As explained in the Attorney General's opinion, the Act if followed would interfere improperly with the Constitutional and federal statutory roles of the Congress and President of the United States as well as the Mayor in the budget and appropriations process for the District of Columbia, and compliance with it could cause officials and employees of the District government to be in violation of federal statutes that carry administrative as well as criminal penalties. His opinion is fully consistent with the written opinion issued by the U.S. Government Accountability Office ("GAO") on January 30, 2014. The GAO concluded: "Provisions of the [Act] that attempt to change the federal government's role in the District's budget process have no legal effect....The District Government remains bound by provisions of federal law which require it to submit

budget estimates to the President for transmission to the Congress for the enactment of appropriations... Because acts taken *ultra vires* are, *ab initio*, legally ineffective, portions of the [Act] that purport to change the federal government's role in the District's budget process are without legal force or effect." (pp. 11-12, emphasis added.) I am not willing either to violate federal appropriations laws or to subject our employees to the risks of prosecution or administrative sanctions that would flow from the Council's implementation of the illegal Act.

The Act, if implemented, would purport effectively to cut the President and Mayor out of our respective roles pursuant to the Home Rule Act in transmitting to Congress the entire budget for the District – both the federal *and* local dollars portion of the budget. The Act would also reduce the role of Congress in appropriating local revenue, which revenue approximates 70% of the D.C. budget. The Act would call for the local portion of the annual budget to be submitted by the Chairman of the Council to the Speaker of the House of Representatives for passive review. But the Home Rule Act expressly calls for the full District's budget – both local and federal dollars – to be transmitted by the *Mayor* to the *President* for transmission by him to the Congress and for Congress then to appropriate the full D.C. Budget. The Council cannot usurp the Mayor's long-established authority and responsibility to submit the full unified budget, nor can it unilaterally restructure the role in the budget process played by federal officials and Congress.

The Attorney General's legal opinion is binding on the Executive branch officials in the District government absent a controlling court opinion to the contrary. Because, as the opinion concludes, the Act is a legal nullity, the Act can have no effect on the formation of the District's budget. Further, monies voted on by the Council but not contained in a budget passed by both houses of Congress and signed by the President cannot be spent without exposing our employees to criminal or civil liability.

We must comply with federal law while we continue to push in Congress for budget autonomy, for which we now have support from the White House and within both houses of Congress. In support of this request to the Council, consider some of the following possible adverse consequences if the Council adheres to the Act, in the absence of a governing judicial ruling of its validity, and ignores the provisions of the binding and valid Home Rule Charter.

If the Council follows its contemplated schedule and takes more than 56 days to consider the budget pursuant to the Act, evidenced by a currently scheduled second vote on the FY 15 Budget Request Act 70 days from the budget's submission (*i.e.*, two weeks after the 56 day statutory deadline), it will be in violation of the Home Rule Act. That violation will deprive my Office as well as the President and Congress of the ability to comply with applicable statutory responsibilities in the creation and enactment of the District's budget, a process set up four decades ago by Congress for the benefit of funding the District's operations and followed faithfully and scrupulously until this year. If that happens, I intend to the best of my ability to continue to comply with the Home Rule Act's budget requirements. Therefore, I intend to transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to you of the budget, whether or not the Council has taken a second vote. A dispute as to whether or not this is the District's duly proposed budget could well lead either to the President's ignoring the elected officials of the District and transmitting his own budget for the District to the Congress (31 U.S.C. § 1108(b)(1)) or even to Congress' declining to pass any significant budget for the District in FY 2015.

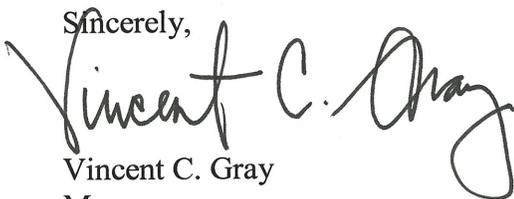
Second, if the District fails to enact a valid Budget Request Act and submit it to Congress for inclusion in a continuing resolution or appropriations act, there is also a serious risk that the District will not be able to avail itself of the protection afforded by section 816 of the Consolidated Appropriations Act, 2014. This crucial appropriations authority advanced to the District the funds contained in the FY 2015 Budget Request Act for periods during which no federal continuing resolution or appropriations act for the District is in effect. However, a condition included by Congress, presumably for the District's financial benefit, is that the District have a validly enacted budget. We have come too far to jeopardize our ability to keep the District functioning if the federal government shuts down again. I urge the Council to be responsible and enact a valid budget for the protection of the District. If the Council does not, it will put the District's finances in a highly precarious position.

There is even the possibility that if the District government does not come together to enact a valid budget, in accordance with the Home Rule Charter as passed by Congress, the Control Board could be reactivated. (D.C. Official Code § 47-392.09.) If because of the absence of Congressional appropriations, the District cannot lawfully make local expenditures in FY 2015, the District could once again become subject to governance by the Control Board. Such action occurs by operation of law if the District fails to meet its payroll for any pay period, fails to make any required payments relating to pensions and benefits or fails to make payments required under an interstate compact. (D.C. Official Code §§ 47-391.07 (b); 47-392.09) That would be a disastrous outcome for Home Rule in the District and we should take steps to avoid it.

As you consider our urgent request, you should know of my intended actions in light of the Attorney General's opinion, and in consultation with the Chief Financial Officer. First, I will direct all subordinate agency District officials not to implement or take actions pursuant to the Act, which contravenes our Home Rule Charter and other federal law. Second, I will veto any FY 15 budget transmitted by the Council that is not inclusive of both the local and federal portions of the budget, as required under the Home Rule Act. Third, as noted, to achieve compliance to the extent I am able with the Home Rule Act, I will transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to you of the budget, whether or not the Council has taken a second vote.

I would be pleased to meet with you and other appropriate Members of the Council to discuss these matters and to find solutions which will avoid the dire possible consequences of failing to reach agreement on the proper procedures for the FY 2015 budget process. As always, I appreciate a mutually respectful dialogue with you. Thank you for your prompt consideration of these matters.

Sincerely,

A handwritten signature in black ink that reads "Vincent C. Gray". The signature is written in a cursive, flowing style.

Vincent C. Gray
Mayor

Enclosure

cc: Jeffrey S. DeWitt, Chief Financial Officer
Irvin B. Nathan, Esq., Attorney General
The Honorable David A. Catania
The Honorable Vincent B. Orange, Sr.
The Honorable David Grosso
The Honorable Anita D. Bonds
The Honorable Jim Graham
The Honorable Jack Evans
The Honorable Mary M. Cheh
The Honorable Muriel Bowser
The Honorable Kenyan McDuffie
The Honorable Tommy Wells
The Honorable Yvette M. Alexander
The Honorable Marion Barry